

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

In re)	Chapter 13
John Rakebrandt and)	Bk. No. 05-11418-JMD
Dale Ann Rakebrandt,)	
Debtors)	
)	<u>SCHEDULED HEARING</u>
		September 6, 2006
		11:00 A.M.

**DEBTORS' MOTION TO SELL REAL ESTATE FREE AND CLEAR OF LIENS
PURSUANT TO 11 U.S.C. § 363**

NOW COME John Rakebrandt and Dale Ann Rakebrandt (hereinafter Debtors),
debtors in the above-captioned matter, by and through their attorney, Leonard G. Deming, II,
and say:

JURISDICTION

1. Jurisdiction is vested in the court by virtue of 28 U.S.C. Section 1334, and venue is laid in this district pursuant to 11 U.S.C. Section 1408. The U.S. District Court for the District of New Hampshire has issued a standing order of referral to the bankruptcy court for this district pursuant to 28 U.S.C. § 157(a).

2. This is a core proceeding pursuant to 11 U.S.C. § 157 (b)(2)(N).

3. This is a motion by the Debtors to sell a portion of their real estate located along Barrett Hill Road in the Town of Mason, New Hampshire (hereinafter the real estate) pursuant to 11 U.S.C. § 363(b)(1) and 11 U.S.C. § 363(c) and (f) as incorporated by 11 U.S.C. § 1303.

FACTS

4. Debtors filed their bankruptcy case under Chapter 13 of the Bankruptcy Code on April 11, 2005.

5. Debtors scheduled real estate consisting of two (2) main parcels, one being approximately 4.2 acres whereon their home sits. Hereinafter the homestead parcel.

6. The second parcel is on the other side of Barrett Hill Road consisting of approximately 16 acres. Hereinafter the unimproved parcel. Copy of Plan #2349 recorded in the Hillsborough County Registry of Deeds attached hereto and incorporated herein by reference as Exhibit A.

7. A subdivision of 4.9 acres of the unimproved parcel has been recorded in the Hillsborough County Registry of Deeds as a Lot Line Adjustment Plat recorded as Plan 31540, Drawer 146. Hereinafter the sale parcel. Copy attached hereto and incorporated herein by reference as Exhibit B.

8. The Debtors have entered into a Purchase and Sales Agreement as to the sale parcel subject to approval by this Court. Hereinafter the P&S Agreement. Copy attached hereto and incorporated herein as Exhibit C.

9. The P&S Agreement sets forth a sale price of \$50,000 for the sale parcel.

10. All of the real estate referred to herein is subject to the following liens and encumbrances:

A. A first mortgage to Homecomings Financial Network to which is owed, based upon information and belief, approximately \$213,000 recorded in the Hillsborough County Registry of Deeds at Book 6238, Page 1419.

B. A Writ of Execution in favor of Theodore Merritt which, upon information and belief, will be satisfied by a payment of \$1,738.14, recorded in the Hillsborough County Registry of Deeds at Book 6646, Page 2123.

C. Real estate taxes due to the Town of Mason in the approximate amount of \$11,171, recorded and unrecorded.

11. The Debtors listed the unimproved parcel for sale, such listing with Coldwell Banker Residential Brokerage (hereinafter realtor) being approved by this Court. The realtor

would be entitled to a commission relative to this sale in the amount of \$2,500 based upon a commission of 5% as set forth in the listing agreement.

12. The Debtors propose to sell the sale parcel free and clear of liens pursuant to 11 U.S.C. § 363(b)(1) and 11 U.S.C. § 363(f)(3) and/or (5) and/or, if the first mortgagee consents, 11 U.S.C. § 363(f)(2).

13. Sale of the sale parcel would be in the best interests of the creditors of the estate, and would be consistent with the Debtor's Second Amended Chapter 13 Plan Dated July 12, 2006 which envisions the sale of the unimproved parcel resulting in the payment of a 100% dividend to the unsecured creditors.

14. The secured interests on the sale parcel would attach to the proceeds of the sale, and the Debtors propose to disburse the proceeds as follows:

Sales Price		\$50,000
<u>Less</u>		
Closing costs (estimated)	3,000	
Town Taxes (secured and priority)	11,171 (estimated only)	
<u>Merritt Lien</u>	<u>1,739</u>	
Total deductions	15,910	15,910
Balance from sale to Homecomings (First mortgage)		34,090

15. The sales price for the sale parcel is a fair and reasonable price and is better than could normally be expected for this 4.9 acres piece at the eastern end of the unimproved parcel, and this is due to the special interest which the buyers have in the parcel since they reside directly across the road from the sales parcel. It essentially consists of an un-buildable lot.

16. The first mortgagee would be adequately protected by the sale inasmuch as:

A. The payment of the taxes which attach to all of the real estate would free up equity in the remaining real estate *pro tanto*.

B. The parcel sold would be the least valuable of the real estate, but it would reduce the balance due on the first mortgage by approximately \$34,000.

C. Appraisals performed within the past several months give in indicated value of just the homestead parcel at somewhere between a low of \$235,000 and a high of \$370,000.

D. The value of the remaining portion of the unimproved parcel, consisting of 11.1 acres, which is the best of the unimproved parcel is estimated at somewhere between \$170,000 and \$220,000.

E. The total value of the remaining real estate still subject to the first mortgage would therefore be somewhere between \$405,000 and \$590,000 while the balance due to the first mortgagee based upon its proof of claim would be somewhere around \$179,000.

17. That all liens currently attaching to the sale parcel are liens within the meaning of 11 U.S.C. §363(f)(3), and the price at which the property is to be sold is greater than the aggregate value of all liens on the sale parcel.

18. Further, that the first mortgagee can be compelled under the circumstances pursuant to 11 U.S.C. §363(f)(5) to accept a money satisfaction of its interest in the sale parcel inasmuch as it is being provided adequate protection therefor which provides the “indubitable equivalent” of the property to the first mortgagee, the first mortgagee will be left greatly and better secured than at present, the price is fair and reasonable, the sale is in the best interest of the first mortgagee and all creditors of the estate, and it is imperative that the sale be accomplished quickly.

PRAYER FOR RELIEF

WHEREFORE, the Debtors pray the Honorable Court grant them the following relief:

A. Approve the sale of the real estate as set forth herein and in accordance with the Purchase and Sales Agreement pursuant to 11 U.S.C. § 363(b)(1) as incorporated by 11 U.S.C. § 1303.

B. Direct that the sale of the sale parcel shall be free and clear of all liens in accordance with 11 U.S.C. §363(f)(3), with such liens attaching to the proceeds as set forth herein.

C. In the alternative, direct that the sale of the sale parcel shall be free and clear of all liens in accordance with 11 U.S.C. §363(f)(5), with such liens attaching to the proceeds as set forth herein.

D. Approve compensation to the realtor in the amount of five percent (5%) of the sales price.

E. Direct that the distribution of the proceeds of the sale be effected substantially in accordance with paragraph 14 of this motion.

F. Waive the ten (10) day stay of the effective date of the Court's order set forth in BR 6004(g).

G. For such other and further relief as is just and equitable.

Respectfully submitted,
JOHN AN DALE RAKEBRANDT
By their Attorney

August 7, 2006
Date

/s/ Leonard G. Deming, II
Leonard G. Deming, II
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CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that I have served a copy of the foregoing Motion to Sell Free and Clear of Liens upon the following persons at the addresses indicated by first class mail, postage prepaid this 8th day of August, 2006.

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/s/ Leonard G. Deming, II